

**ARTICLE 24:05**

**SPECIAL EDUCATION**

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## CHAPTER 24:05:13

### DEFINITIONS

#### Section

24:05:13:01	Definitions.
24:05:13:02	Free appropriate public education (FAPE) defined.
24:05:13:03	<del>Foster parent</del> <u>Repealed.</u>
<u>24:05:13:04</u>	<u>Parent.</u>

**24:05:13:01. Definitions.** Terms defined in § ~~24:03:01:01~~ 24:43:01:01 and in SDCL 13-37-1 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) "Adjustment training center," "ATC," a facility as defined in § 46:11:01:01(2);
- (2) "Adult services," services pertaining to independent living, vocational development, preemployment services, or employment services designed for persons 16 years of age or older;
- (3) "Approved program," a written description of a school district's, state agency's, special education school's, or adjustment training center's policies and procedures for implementing its special education program that is found by the division to comply with this article;
- (4) "At no cost," the provision of specially designed instruction without charge to the parent except for incidental fees that are normally charged to students without disabilities or their parents as a part of the regular education program;
- (5) "Brailist," a person who produces materials in braille by the use of a manual braille writer, slate and stylus, or computer;
- (6) "Braille teacher," an individual who assists classroom teachers in the instruction of reading and writing through the use of braille;
- (7) "Business day," Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day;
- (8) "Consent," as used in this article, the term consent, means:
  - (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom;

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime; and

(d) If a parent revokes consent, that revocation is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked;

(9) "Core academic subjects," English, reading, language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography;

~~(8)~~ (10) "Day," calendar day unless otherwise indicated as a business day or school day;

~~(9)~~ (11) "Day school program," a specialized program provided in a facility, a school district, or a cooperative center that a child attends during the day, returning home at night;

~~(10)~~ (12) "Department," the Department of Education ~~and Cultural Affairs;~~

~~(11)~~ (13) "Early childhood special education program," a program specially designed to meet the unique needs of children with disabilities, birth through six years of age, including center-based instruction, home-based instruction, and instruction in hospitals and institutions;

(14) "Elementary and Secondary Education Act," "ESEA," the federal Elementary and Secondary Education Act as codified at 20 U.S.C. 6301 et seq., January 8, 2002 and 34 C.F.R. Part 200, published in the Federal Register on December 2, 2002;

~~(12)~~ (15) "Eligible student," a person through the age of 21 years who is a resident of the state of South Dakota and who requires special education or special education and related services because of the person's educational needs;

(16) "Homeless children," the term, homeless children and youths, as defined in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq., as amended to January 1, 2007;

~~(13)~~ (17) "Individuals with Disabilities Education Act," "IDEA," the federal Individuals with Disabilities Education Act as codified at 20 U.S.C. §§ 1411 to 1420, inclusive, ~~June 4, 1997, December 3, 2004~~ and 34 C.F.R. Part 300, ~~Part 301, and Part 303, published in the Federal Register on March 12, 1999~~ August 14, 2006;

~~(14)~~ (18) "Individual educational program," "IEP," a written statement educational program for a specific child with a disability ~~individual~~, in accordance with §

24:05:27:01.03 chapter 24:05:27, based on the multidisciplinary evaluation a full and individual evaluation of the child and developed by an IEP team;

~~(15)~~ (19) "Individualized education program team," "IEP team," as used in this article, the term, individualized education program team, or, IEP team, means the group of individuals described in § 24:05:27:01.01 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;

~~(16)~~ (20) "Least restrictive environment," a learning environment for a child in need of special education or special education and related services, including a child placed in a public or private institution or another care facility, that includes to the maximum extent appropriate children who are not in need of special education or special education and related services, as determined through the child's individual educational program;

(21) "Limited English proficient," as the term is defined in section 9101(25) of the ESEA;

~~(17)~~ (22) "Local education agency," a school district or other public authority under supervision of the division established by state law for the purpose of providing free public education on a regional basis which also provides special education and related services to children with disabilities within the state of South Dakota;

~~(22) "Multidisciplinary evaluation," an individual evaluation of student needs in all areas related to the student's suspected disability, including, as applicable, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;~~

(23) "National Instructional Materials Access Center," "NIMAC," the center established pursuant to section 674(e) of the IDEA;

(24) "National Instructional Materials Accessibility Standard," "NIMAS," as the term is defined in section 674(e)(3)(B) of the IDEA;

~~(19) "Parent," a natural or adoptive parent, a guardian, a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives, a person who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with this article, but not the state if the child is a ward of the state;~~

~~(20)~~ (25) "Policy," a rule, regulation, or standard enacted by a school district board;

~~(21)~~ (26) "Physical education," the development of physical and motor fitness and fundamental motor skills and patterns through individual and group games and sports, including intramural and lifetime sports, special physical education, adapted physical education, movement education, and motor development;

~~(22)~~ (27) "Related services," services that support the provision of special education, including transportation and those developmental, corrective, and other supportive services determined by an IEP team to be required for an eligible child to benefit from special education;

~~(23)~~ (28) "Residential school program," an approved specialized program provided in a facility that a child attends 24 hours a day;

(29) "Scientifically based research," as the term is defined in section 9101(37) of the ESEA;

~~(24)~~ (30) "Secretary," the secretary of the Department of Education ~~and Cultural Affairs;~~

~~(25)~~ (31) "Self-contained program," a specialized instructional environment for eligible children in need of special education or special education and related services who require intensive instructional procedures;

~~(26)~~ (32) "Special education," instruction specially designed to meet the unique needs of a student with disabilities at no cost to parents or guardians, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, and other settings;

~~(27)~~ (33) "Specially designed instruction," adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction;

~~(28)~~ (34) "Standard deviation," a statistical measure of variation derived by squaring each deviation in a set of scores, taking the average of these scores, and then taking the square root of the results;

~~(29) "Subgrantee," a recipient of federal funds from the department, such as a local school district, a cooperative educational service unit, and an adjustment training center;~~

~~(30)~~ (35) "Travel training," instruction provided, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community); and

~~(31)~~ (36) "Vocational education," organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advance degree;

(37) "Universal design," as the term is defined in section 3 of the Assistive Technology Act of 1998, 29 U.S.C. 3002, as amended to January 1, 2007; and

(38) “Ward of the state,” a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in § 24:05:13:03.

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1, ~~13-32-4~~.

**Law Implemented:** SDCL 13-37-1.1, ~~13-32-4~~.

**24:05:13:02. Free appropriate public education (FAPE) defined.** For purposes of this article, the term, free appropriate public education, or FAPE, includes special education and related services which meet the following requirements:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the state board in this article and the implementing regulations for Part B of the Individuals with Disabilities Education Act as in effect ~~June 4, 1997~~ December 3, 2004, and 34 C.F.R. ~~Parts~~ Part 300-~~302~~, published in the Federal Register on ~~March 12, 1999~~ August 14, 2006;

(3) Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and

(4) Are provided in conformity with an individual educational program and this article.

FAPE shall be made available to any eligible individual child with a disability who needs special education and related services even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. FAPE shall also be provided to eligible children with disabilities who have been suspended or expelled from school consistent with chapters 24:05:26 and 24:05:26.01. The determination that a child is eligible under this article must be made on an individual basis by an IEP team.

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; transferred from subdivision 24:05:13:01(10), 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:13:03. Foster parent.** ~~A foster parent may act as a parent under Part B of the Individuals with Disabilities Education Act if:~~

- ~~(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law;~~
- ~~(2) The foster parent has an ongoing, long term parental relationship with the child;~~
- ~~(3) The foster parent is willing to make educational decisions required of parents under the Individuals with Disabilities Education Act; and~~
- ~~(4) The foster parent has no interest that would conflict with the interests of the child~~ Repealed.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** ~~SDCL 13-37-1.1.~~

**Law Implemented:** ~~SDCL 13-37-1.1.~~

**24:05:13:04. Parent.** For the purposes of this article, the term, parent, means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with § 24:05:30:15.

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.